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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

GAIL HOLLANDER et al., Plaintiffs and Appellants, v. XL INSURANCE (BERMUDA) LTD., Defendant and Respondent.	B230807 (Los Angeles County Super. Ct. No. BC365455)

APPEAL from an order of the Superior Court of Los Angeles County, Michael L. Stern, Judge. Affirmed.

A. Tod Hindin and Karen L. Hindin for Plaintiffs and Appellants.

Burris Schoenberg & Walden, Richard E. Walden, Laura G. Brys; Steptoe & Johnson and Stephen O'Donnell, for Defendant and Respondent.

Plaintiffs Gail and Stanley Hollander (the Hollanders) appeal the trial court's order quashing service of their summons and complaint for lack of personal jurisdiction against defendant XL Insurance (Bermuda) Ltd. (XLIB). The Hollanders contend the trial court erred because XLIB received premiums from California insureds, both directly and through a reinsurance contract, and thus XLIB has sufficient contacts to California to confer both general and specific jurisdiction. We affirm.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY[1]

This is the second appeal considering whether California courts have jurisdiction over an insurance company that is not the Hollanders' insurer. As set forth in their complaint, the Hollanders own fine art by the German artist Martin Kippenberger. On January 9, 2006, employees of LA Packing were hanging three paintings by Kippenberger in the Hollanders' home and damaged the cardboard frames. The Hollanders made a claim under their two policies issued by defendant XL Speciality. Natasha Fekula, a claims adjuster, arranged for the paintings to be returned to Kippenberger's gallery in Germany, where they were repaired at XL Specialty's expense. The Hollanders disagreed with Fekula's estimate regarding the diminution in value of the paintings, and arranged to have the paintings sold at auction for $181,745 less than the scheduled value of the paintings on the insurance policy. XL Speciality also cancelled a renewal policy issued to the Hollanders.[2]

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[1] This appeal is consolidated with No. B229004, *Hollander v. XL Capital Ltd.* filed February 9, 2011. However, because the two appeals involve different defendants and different issues, we file separate opinions in each case.

[2] XL Specialty has appeared and does not contest jurisdiction. As explained in a prior appeal in this matter, the policies were issued by XL Specialty under defendant XL Capital, Ltd.'s (XL Capital) Fine Art & Specie Brand. (See *Hollander v. XL London Market Ltd., et al.* (April 16, 2010, B213846) [nonpub. opn.].) Defendants XL Capital is a Cayman Islands corporation; XL Capital and its wholly-owned subsidiary XL Re, Ltd., a Bermuda corporation, waived jurisdiction after we ordered them to submit to discovery (See *Hollander v. Superior Court* (Aug. 16, 2007, B200615) [nonpub. opn.].)

In January 2007, the Hollanders commenced this action against XL Specialty and numerous other defendants,[3] including Doe defendants, alleging claims for breach of contract, breach of the covenant of good faith and fair dealing, breach of Insurance Code section 785, and promissory fraud, and also asserted a claim against LA Packing for negligence.[4] On April 29, 2008, the Hollanders amended their complaint to assert that XL Capital, as the parent company of the related entities, was the alter ego of the other defendants and operated a "single enterprise." In December 2008, the Hollanders added XLIB as the Seventh DOE defendant.[5] In February, the Hollanders moved to file a first supplemental and second amendment to their complaint to allege that XL Capital was the alter-ego of XLIB.[6]

1. XLIB's Motion to Quash

On August 30, 2010, XLIB made a special appearance and moved to quash service on the summons and complaint against it on the basis of lack of personal jurisdiction in California. In a nutshell, XLIB argued that not only did it not issue the policies to the

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[3] The 10 original XL defendants in this action are: XL Capital; XL Re; XL America Group (a partnership); XL Reinsurance America, Inc.; XL Insurance Company of New York, Inc.; Greenwich Insurance Company; Indian Harbor Insurance Company; XL Specialty Insurance Company; XL Insurance America, Inc.; and XL Select Insurance Company.

[4] On April 16, 2010, we affirmed the trial court's quashing of the Hollanders' summons and complaint against United Kingdom corporations XL London Market, Ltd., XL London Market Services, Ltd., and XL Services UK Ltd. on the basis of lack of personal jurisdiction. The Hollanders asserted jurisdiction based upon the connection between LA Packing's insurer, Syndicate 1209 and these entities. We found no jurisdiction primarily because these XL entities, which principally engaged in underwriting, did not issue insurance to California insureds. (See *Hollander v. XL London Market Ltd., et al., supra,* B213846.)

[5] The Hollanders added at the same time as Doe defendants Exel Holdings, Limited; Mid Ocean Limited; Mid Ocean Holdings Ltd.; and Ridgewood Holdings, Limited. All of these defendants moved to quash; however, the Hollanders' appeal only addresses the denial of personal jurisdiction over XLIB.

[6] Apparently, this amendment was not filed.

Hollanders, it did not do business in California, and its small number of insureds in California did not subject it to jurisdiction within the state. As a result, relying on *Elkman v. National States Ins. Co.* (2009) 173 Cal.App.4th 1305 (*Elkman*), XLIB asserted it was not subject to the general jurisdiction of the court because it did not have substantial, continuous, and systematic contacts with California; furthermore, there was no basis to apply a vicarious theory of jurisdiction because the distant corporate relationship between XLIB and XL Capital (XLIB is a subsidiary of a subsidiary of XL Capital, which owns the Fine Art & Specie brand under which XL Specialty issued the policy) was an insufficient basis to invoke the doctrine due to the lack of control of XLIB by XL Specialty. Finally, there was no basis for special jurisdiction because XLIB had not availed itself of the privilege of doing business in California; the litigation did not arise out of XLIB's contact with California; and the exercise of jurisdiction would not be reasonable here.

Kim Wilkerson Outerbridge, on behalf of XLIB, submitted a declaration that stated she was the vice president and counsel and assistant secretary of XLIB. XLIB is an insurance company formed in 1986 and incorporated under the laws of Bermuda. XLIB is a wholly-owned subsidiary of EXCEL Holdings Limited, which is a wholly-owned subsidiary of XL Capital. XLIB's sole office is located in Hamilton, Bermuda. All books, records, and other documents of XLIB are maintained at its offices in Bermuda; no such documents or records are located in the State of California.

XLIB provides commercial property and casualty insurance products on a global basis for complex corporate risk; the policies issued include umbrella liability, product recall, property catastrophe and primary master property and liability coverages. The casualty products written by XLIB are umbrella and higher layer excess policies,[7] meaning that XLIB's liability attaches solely on an excess basis.

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[7] Excess insurance provides coverage after other identified insurance is exhausted. (*North American Capacity Ins. Co. v. Claremont Liability Ins. Co.* (2009) 177 Cal.App.4th 272, 291.)

According to Outerbridge, XLIB conducts its business through a network of brokers located in Bermuda, London, or non-United States locations, such as Canada. XLIB does not transact the business of insurance or any other business in the United States, including the State of California. XLIB does not issue or offer insurance policies in California; it has no employees, offices, or telephone numbers in California; it does not instruct its agents to act on its behalf in California; it does not have any bank accounts, nor does it own, rent or lease any real or personal property in the State of California. XLIB does not deliver insurance contracts or policies to California residences or businesses; rather, XLIB issues and delivers its products to brokers based in Bermuda, London, or elsewhere outside of the United States. XLIB is not licensed as an excess or surplus lines carrier in any state in the United States, including California. XLIB holds annual board meetings, makes required statutory filings, and takes other steps necessary to remain an active corporation in good standing in Bermuda. XLIB is regulated by the Bermuda Monetary Authority.

XLIB does not advertise in newspapers, magazines, or other publications directed specifically to residents of the State of California. XLIB did not solicit the Hollanders to buy any form of insurance.

However, XLIB currently has 38 California-based insureds. Policies for those insureds are not issued or delivered to such insureds by XLIB but are issued or delivered by brokers based on Bermuda, London, or elsewhere outside of the United States. All such XLIB policies contain an arbitration provision stating that there is no contractual agreement by XLIB to litigate any dispute, controversy or claim arising out of its policies in a United States court of law. None of the policies contain a California choice of law provision.

2. The Hollanders' Opposition

The Hollander's opposition to the motion to quash painted an entirely different picture. The Hollanders asserted that XLIB, as a wholly-owned subsidiary of defendant XL Capital, was subject to general jurisdiction because it conducted substantial business in California: more than six percent of XLIB's insureds listed as their principal place of business a California address (this six percent consisted of 38 out of XLIB's approximately

600 to 700 insureds); 90 percent of XLIB's insureds in the world are United States-based or have United States operations; XLIB writes extremely large policies of between $25 million to $100 million; XLIB derived substantial income from California insureds on a continuous basis ($75 million per year), paid by its wholly owned United States subsidiaries through an internal profit sharing scheme which enabled XLIB to reduce its tax exposure in the United States.[8] The Hollanders also asserted that the court had specific jurisdiction over XLIB because XLIB expressly assumed the obligations in this lawsuit of defendant XL Re Ltd.,[9] and lastly, based on the Hollanders' insurance claim arising from XLIB's operations in California and its partnership with a group of its subsidiary insurance companies known as "XL America Group."[10]

Kevin L. Prins, an MBA and economist, submitted a declaration in which he stated that he had analyzed numerous materials relating to the business affairs of XLIB[11] and had

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[8] This "scheme" is actually a reinsurance agreement set forth in the Quota Share Reinsurance Agreement, described below.

[9] The complaint alleges that XL Re, Ltd. is a wholly-owned subsidiary of XL Capital.

[10] According to the Hollanders, seven companies (all defendants in this action) comprise the XL America Insurance Group: (1) XL Reinsurance America, Inc; (2) Greenwich Insurance Company (Greenwich); (3) XL Insurance America, Inc.; (4) XL Specialty; (5) XL Insurance Company New York, (6) Indian Harbor Insurance Company; and (7) XL Select Insurance Company.

The Hollanders asserted that in the first nine months of 2010, three XLIB subsidiaries (Greenwich, XL Specialty, and XL Insurance America) generated $149,959,217 in premiums; of this, as parent company, a 50 percent share for XLIB would be $74,074,608.

[11] These documents included the Outerbridge and George Barit Declarations; XLIB's responses to the Hollanders' first set of interrogatories to XLIB; the deposition testimony of Outerbridge, Barit, and other persons; XL Capital's Form 10-K for the years 2007, 2008, and 2009 filed with the Securities Exchange Commission; XL Capital's 2010 proxy statement for its annual shareholder meeting; the organizational chart of XL Capital and its subsidiaries from the 2009 annual statement of XL Speciality filed with the National Association of Insurance Commissioners; the organizational chart of XL Capital from the 2007 annual statement of XL Specialty filed with the California Insurance

concluded that XLIB conducted a substantial amount of insurance business in California on a continuous and systematic basis and as a result reaped significant economic benefits from the California economy. XLIB insured directly 38 California domiciled businesses; in addition, it afforded insurance coverage relating to California risks to a number of multinational corporations on a worldwide basis. Although such multinational corporations were not domiciled in California, their California situated businesses and properties were insured by XLIB.

Further, XLIB received between 50 and 75 percent of the premiums generated by its subsidiaries comprising XL America Group from XL America Group's California business, which the Hollanders estimated to be $75 million for the first nine months of 2010, based on the most recent financial statements made available to members of the XL America Group. According to the XL Capital website, XLIB had been organized in 1986 by 68 of the world's largest global corporations for the express purpose of providing liability insurance in the United States market (which at the time was experiencing a shortage of available liability insurance). XLIB, as a Bermuda corporation, paid no taxes in the United States. Prins asserted that it was "extremely likely" in addition to the 38 California-domiciled insureds, that many of XLIB's non-California domiciled corporate insureds owned or leased California property and had California located business operations insured by XLIB covering the California-located risks.

The Hollanders also relied on the Quota Share Reinsurance Agreement, a reinsurance agreement between signatories NAC Reinsurance Corporation (the pool leader) and XL Insurance Ltd., which provides that XL Insurance Ltd. reinsures, on a quota share

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Department; the webpage from XL Capital's website entitled "XL—A History 1986–2006;" XLIB's annual statements for 2008 and 2009; reports filed by XL Speciality and related entities for the years 2007 to 2009; documents relating to the Quota Share Reinsurance Agreement between XLIB and other related entities; the Third Amended and Restated Inter-Company Reinsurance Pooling Agreement; letters regarding various versions of the Restated Intercompany Pooling Agreement; AM Best Reports for XLIB and related entities for the year 2009.

basis, 75 percent of the business of pool members (Greenwich, Intercargo Insurance Company, XL Insurance Company of New York, and Indian Harbor Insurance Company). Pursuant to a novation effective October 1, 2009 and approved by the State of New York, XLIB assumed the obligations of XL Re and XL Reinsurance America, Inc. under the Quota Share Reinsurance agreement. The Hollanders asserted that XLIB received substantial sums generated by its subsidiaries (who are parties to the Quota Share Reinsurance Agreement) from such subsidiaries' California insurance business.

Further, Prins asserted that XLIB "marketed its insurance products in California directly through its employees meeting with brokers and clients in California and elsewhere in the United States" based upon XLIB's travel records showing that XLIB sent multiple underwriters on multiple trips to California to market its products. Most of XLIB's business was funneled through large insurance brokerage firms such as AON, Marsh & McLennan, Wilcox, and Lockton. These firms had Bermuda offices and numerous United States offices: AON has 35 offices in California; Marsh & McLennan has nine offices in California; Wilcox has 11 offices in California; and Lockton has 11 offices in California. XL Re, Ltd. stated its in 2009 Annual Report that during 2009 and 2008, 29 to 30 percent of its gross written premiums were generated from and placed by AON; 24 and 21 percent of its gross written premiums in 2009 and 2008, respectively, were generated from and placed by Marsh & McLennan.

Sheldon J. Bachrach, an insurance broker and agent licensed in California, stated in his declaration that he had extensive experience procuring insurance from Bermuda-based insurance companies, including XLIB. Bachrach would be approached by a California-based corporation or individual; if Bachrach determined that insurance from a Bermuda-based company was the best product, he would approach an intermediary with a Bermuda branch, such as AON. The intermediary would approach the Bermuda broker; the insurance policy would be issued by the Bermuda company and delivered to the Bermuda broker who delivers through the intermediary to Bachrach, who delivers it to his client.

3. XLIB's Reply

In reply, XLIB asserted that the trips made by XLIB personnel during the period 2007 to 2010 involving travel to California consisted of 10 individual trips in four years to visit industry conferences that happened to be held in California. XLIB has a procedure that ensures that XLIB's claims and underwriting personnel are instructed not to do anything that might be construed as conducting business in the United States. The legal department must sign off on all travel forms, and ensure that activities are in conformance with XLIB's tax guidelines. In particular, underwriters must ensure that there are no discussions of a transactional nature, no underwriting decisions are made in the United States, any meetings with clients are not account specific, and there is no solicitation of business in the United States. Bermuda brokers organize meetings where XLIB underwriters meet, via teleconference, with United States brokers and talk about the general capabilities of XLIB for a particular product line. The 38 XLIB California-based insureds had policies that were issued and delivered to independent brokers based in Bermuda, London, or elsewhere outside the United States, who transferred the policies to corresponding brokers in the United States. Outerbridge had testified at deposition that all of the XLIB underwriting decisions take place in Bermuda, and insureds travel to Bermuda for face-to-face meetings, and the policies are placed via a Bermuda-based broker.

With respect to the Quota Share Reinsurance Agreement, XLIB asserted it had been approved by state regulators; it is an agreement by which premiums and liabilities are shared between reinsurers.

4. Trial Court Ruling

At the hearing, held February 7, 2011, the court granted the motion because there was no showing of any substantial, continuous or systematic activities on the part of XLIB in California sufficient to confer general or specific jurisdiction because the 38 XLIB insureds was not sufficient California business for jurisdictional purposes.

DISCUSSION

The Hollanders argue that the 38 XLIB policies sold to California-based insureds are sufficient to confer general jurisdiction on XLIB, relying on *A.I.U. Ins. Co. v. Superior Court* (1986) 177 Cal.App.3d 281 (*A.I.U.*) and *McClanahan v. Trans-america Ins. Co.* (1957) 149 Cal.App.2d 171 (*McClanahan*), and distinguishing *Elkman*, *supra*, 173 Cal.App.4th 1035. In addition, they contend XLIB is subject to specific jurisdiction based upon its assumption of the obligations of XL Re, because the Hollander's lawsuit is related to XLIB's insurance business, and XLIB receives a portion of the premiums under the Quota Share Reinsurance Agreement; further, an exercise of specific jurisdiction would be reasonable because XLIB is represented by the same attorneys representing the other XL defendants, resulting in efficiencies and cost savings, and having all of the possibly liable defendants appear in the same forum avoids the risk of inconsistent judgments.

XLIB counters that it does not have the requisite "substantial, continuous and systematic" contacts with California sufficient to confer general jurisdiction because it has no offices in California, does not conduct business in California, does not advertise in California, does not directly sell its products in California, it is not licensed to do business in the state; further, the small number of California-based companies with XLIB polices is insufficient for jurisdictional purposes because, like the insurer in *Elkman*, *supra*, 173 Cal.App.4th 1035, XLIB has no other contacts with California. In addition, it contends that the Quota Share Reinsurance agreement does not provide a basis for jurisdiction because it is merely a reinsurance contract pursuant to which XLIB, in exchange for premiums generated by United States entities, assumes obligations and liabilities associated with those premiums. XLIB contends there is no basis for specific jurisdiction because XLIB has taken no actions purposefully directed at California; the Hollanders' claims do not arise out of the Quota Share Reinsurance Agreement; XLIB has no contacts at all with California; and its contacts with California are so insignificant that jurisdiction is unreasonable.

A. Standard of Review

On a defendant's motion to quash for lack of personal jurisdiction, the plaintiff bears the initial burden of establishing a factual basis for jurisdiction by a preponderance of the evidence. If the plaintiff satisfies this burden, the burden shifts to the defendant to show that the exercise of jurisdiction would be unreasonable. (*Snowney v. Harrah's Entertainment, Inc.* (2005) 35 Cal.4th 1054, 1062 (*Snowney*).) "On review, the question of jurisdiction is, in essence, one of law." (*Dorel Industries, Inc. v. Superior Court* (2005) 134 Cal.App.4th 1267, 1273.) If there is a conflict in the evidence, we review the trial court's factual determinations for substantial evidence; but even where there is a conflict, we review independently the trial court's conclusions as to the legal significance of the facts. If there is no conflict in the evidence, our review of the jurisdictional question is de novo. (*Ibid.*)

B. Exercise of Jurisdiction

California's long-arm statute permits the exercise of jurisdiction "on any basis not inconsistent with the Constitution of this state or of the United States." (Code Civ. Proc., § 410.10.) Constitutionally, California courts may exercise personal jurisdiction over nonresidents who have "minimum contacts" with the state. Minimum contacts exist where the relationship between the resident and the forum state is such that the exercise of jurisdiction does not offend "'traditional notions of fair play and substantial justice'" under the due process clause. (*Internat. Shoe Co. v. Washington* (1945) 326 U.S. 310, 316 [66 S.Ct. 154; 90 L.Ed. 95].)

1. General Jurisdiction

Personal jurisdiction is either general or specific. If the defendant's forum-related contacts are extensive and wide-ranging, or substantial, continuous and systematic, the defendant may be subject to the court's general jurisdiction. (*Boaz v. Boyle & Co.* (1995) 40 Cal.App.4th 700, 717.) In the case of general jurisdiction, the claims at issue need not be connected with the defendant's business relationship to the forum. Instead, the defendant is subject to the California court's jurisdiction for all causes of action raised

against it. (*Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 445 (*Vons*).) Factors to consider in evaluating whether general jurisdiction exists are whether the defendant makes sales, engages in business in the state, serves the state's markets, designates an agent for service of process, holds a license, or is incorporated in the forum state. (*Elkman, supra*, 173 Cal.App.4th at p. 1315.)

Here, the Hollanders argue that, based upon 38 XLIB insureds, XLIB's large complement of United States-based insureds (over 90 percent of its business) who may have California property, and its share from the Quota Share Reinsurance agreement, XLIB is subject to general jurisdiction in California. We disagree. There is no general jurisdiction based on the conduct of XLIB's insurance business in California based on 38 XLIB policies held by California insureds. It is undisputed that XLIB is not registered, licensed or qualified to do business in California; did not own or rent offices in California; had not paid income tax in California; did not have a registered agent for service of process in California; did not have officers or directors who resided in California; did not own real estate or have bank accounts in California; did not have brokers in California, and had not solicited any business in the United States.

The presence of 38 insureds, or the Quota Share Reinsurance Agreement (pursuant to which XLIB presumably shares in monies received from other insurers) does not change this analysis because such contact is too de minimis to confer general jurisdiction, which is reserved for those persons and entities whose contacts with California are extensive, wide-ranging and systematic. The percentage share of insureds out of XLIB's total business (six percent) is not determinative for general jurisdiction; rather the absolute number of insureds (38) is so small that this limited contact with California companies based on what were likely excess policies (coverage would not be implicated until the primary policy was exhausted) is too insignificant to assume the magnitude of contacts supporting general jurisdiction. XLIB is therefore similar to the insurer in *Elkman, supra*, 173 Cal.App.4th at pp. 1316–1317, where several hundred California residents remitted premium payments to the insurer. *Elkman* found there was no general jurisdiction because the defendant insurer,

a Missouri corporation, did not have a license to do business in California, did not have an office or bank account in California, did not have any licensed agents in California to sell its products, did no advertising in California and did not have permission to deliver its products in California. (*Ibid.*)

Moreover, premiums generated by subsidiary businesses, either through their businesses as subsidiaries or through the Quota Share Reinsurance Agreement,[12] do not establish jurisdiction merely based upon premiums received through either channel because these attenuated contacts (as excess insurer or reinsurer) are not extensive, wide-ranging and systematic such that they take the place of physical presence in the form as a basis for jurisdiction. (*Vons*, *supra*, 14 Cal.4th at pp. 445–446; *Elkman*, *supra*, 173 Cal.App.4th at pp. 1316–1317.) Finally, the other bases of jurisdiction (assertion that many of XLIB's non-California insureds likely owned or leased California property, XLIB's other multi-national insureds had offices in California) asserted by the Hollanders amount to pure speculation and fail to establish any nexus between XLIB's insurance business and California.

Nonetheless, the Hollanders assert that because California has an interest in providing its residents with effective redress against insureds, the state has general

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[12] Reinsurance is an agreement by which one insurer (the reinsurer) assumes all or a portion of the risk incurred by another insurer (the reinsured) under an existing insurance policy (the original insurance). (Ins. Code, § 620.) The original insured has no rights against the reinsurer; the original insured is not a party to the reinsurance contract nor a third party beneficiary thereof. (Ins. Code, § 623.) Reinsurance does not alter the primary insurer's relationship with its policyholder, the insured. The ceding (primary) insurer still remains responsible for defending, settling and paying covered claims against the insured. After the ceding insurer pays the full amount of the claim, it may then seek reimbursement from the reinsurer for the reinsured portion of the claim. (*Zenith Ins. Co. v. O'Connor* (2007) 148 Cal.App.4th 998, 1007.) Reinsurance enables an insurer to reduce its statutory reserve requirements and thus write more business, thereby increasing its profitability. (*American Re-Insurance Co. v. Insurance Com'n etc* (C.D.Cal. 1981) 527 F.Supp. 444, 452.)

jurisdiction over XLIB, relying on *A.I.U., supra*, 177 Cal.App.3d 281, and cases cited therein.

The most salient insurer case cited in *A.I.U.* is *McClanahan, supra*, 149 Cal.App.2d 171, and concerned an Alabama insurer, created under Alabama law and having its principal office in that state, having written no insurance policies and maintaining no office or place of business in California, and having no agents, jobbers or independent contractors soliciting business in this state, issued a policy of automobile insurance to Colombian residents for accidents occurring anywhere in the United States. In that policy, it contracted to defend and indemnify the insureds in the United States, and expressly agreed to submit to an action brought in any state by a third party claimant, in the event a judgment were entered against its insureds. (*McClanahan*, at pp. 171–173.) Third party claimants, residents of another state, brought an action against the insurer in California to recover a judgment entered against the insureds arising from an accident occurring in this state. The court noted that "the very nature" of the insurer's business meant that it contemplated appearances in California courts because the insurer indemnified loses arising out of automobile accidents occurring anywhere in the continental United States. The court held that California had jurisdiction because the insurer expressly had assumed a duty to appear in California to defend such lawsuits: "by the very terms of the policy, it was the defendant insurance company which . . . for all practical purposes became a real party in interest—it took over the complete control of all aspects of the case from a defense standpoint." (*Id.* at p. 174.) In pursuit of this defense, it employed a California adjustment service agency, settled a claim, employed attorneys in this state, and engaged physicians to examine one of the plaintiffs, consistent with assuming control of the case. (*Id.* at pp. 173–174.)

We find that while *McClanahan* lends support to the notion that an insurer purporting to provide coverage for losses occurring anywhere may be subject to jurisdiction in the state where such a loss occurs, it does so in the context where the insurer chose to obligate itself to defend, and assumed a very active role in the defense of the lawsuit. In the

present case, the Hollanders have not shown that XLIB had a contractual duty to defend claims, and was involved in the defense of any claims in the state.

In *A.I.U., supra*, 177 Cal.App.3d 281, the United States Environmental Protection Agency and the states of Colorado and California sued Shell Oil Company to compel its participation in cleaning up a toxic waste site. Shell cross-complained against some 250 insurers, including A.I.U., which with other insurers brought an action against O.I.L., a Bermuda Company with no offices in California. O.I.L. was an offshore liability insurance company formed by 35 oil companies, including Shell. O.I.L. provided worldwide insurance coverage to these oil company "shareholders/policyholders." Three of these 35 had their corporate headquarters in California. These California-based oil companies and other O.I.L. "shareholders/policyholders" had substantial assets in California and insured substantial risks in this state. O.I.L. moved to quash service on the basis the court lacked personal jurisdiction. (*Id.* at pp. 284–286.)

The court concluded that O.I.L. issued insurance with worldwide coverage and reasonably should have anticipated being sued in this state, reasoning that the claims against O.I.L. arose partially from its forum-related activities, which included insuring Shell's assets and activities in California. O.I.L. also insured three major California-based oil companies and the California operations of numerous other companies, receiving over $145 million in premiums from the California companies, and thus had derived significant economic benefit from insuring California assets and activities. The court observed that O.I.L. had much greater reason to expect California losses than the insurers in *McClanahan, supra*, 149 Cal.App.2d 171, because O.I.L. insured stationary assets and activities located in California. (*A.I.U., supra*, 177 Cal.App.3d at pp. 290–291.) Unlike the insurer in *A.I.U.*, again here XLIB has no contacts or foothold in California pervasive enough to subject it to general jurisdiction. The 38 policies issued, and the premium sharing devices of the subsidiary relationship and reinsurance contract do not stand in place of a physical presence in the state.

Finally, we find there is no general jurisdiction based upon a theory of alter-ego. Alter ego is a method by which the corporate form will be disregarded where (1) there is such a unity of interest and ownership between the corporation and its equitable owner such that the separate personalities of the corporation and the equitable owner in reality do not exist; and (2) there is an inequitable result in treating the acts of the corporation as those of the corporation alone. (*Sonora Diamond Corp. v. Superior Court* (2000) 83 Cal.App.4th 523, 538 (*Sonora*).) Factors to consider in applying the doctrine include commingling of funds and other assets of the two entities; ostensible liability of one entity for the debt of another; identical ownership of the two entities; use of the same offices and employees; inadequate capitalization; disregard of corporate formalities; and identical directors and officers. (*Id.* at pp. 538–539.) Alter-ego can be a basis for finding jurisdiction. (*F. Hoffman-La Roche, Ltd. v. Superior Court* (2005) 130 Cal.App.4th 782, 796 (*F. Hoffman-La Roche*).) Here, however, the Hollanders have not established that XLIB is the alter ego of XL Capital or XL Specialty such that the corporate form should be disregarded: They presented no evidence, other than the existence of a parent/subsidiary relationship and asserted sharing of revenue, that there was commingling of funds and assets, identical ownership, use of the same offices or employees, inadequate capitalization, or identical officers and directors.

The use of agency as a means of establishing general jurisdiction considers factors similar to the alter ego doctrine, but the analysis is different: "'In the case of agency, the corporate identity is preserved, but the principal is held for the acts of [the] agent.'" (*F. Hoffman-La Roche, supra*, 130 Cal.App.4th at p. 797.) Agency is established where the entity for whom the work is performed has the right to control the activities of the alleged agent. Agency in the context of jurisdictional analysis requires more than mere ownership or control, however. Normally, control is shown where there is a close financial connection between the parent and its subsidiary, and there is a degree of direction and management exercised by the parent over the subsidiary. However, "[i]t must veer into management by the exercise of control over the internal affairs of the subsidiary and the determination of

how the company will be operated on a day-to-day basis." (*Ibid.*) The degree of control exercised by the parent over the subsidiary must reflect the parent's purposeful disregard of the subsidiary's independent corporate existence. (*Sonora, supra*, 83 Cal.App.4th at p. 542.) Further, in the absence of fraud or injustice, courts will treat the parent and subsidiary as separate entities for purposes of jurisdictional analysis. (*F. Hoffman-La Roche*, at p. 797.) Here, the Hollanders have failed to establish, aside from their bare assertion that such control exists, that XL Capital, Ltd. and XL Specialty and XLIB directed each other's activities such that they disregarded the entities' separate form or organization.

2. Specific Jurisdiction

Specific personal jurisdiction, on the other hand, may exist if the defendant's forum-related activities are not so pervasive as to justify an exercise of general jurisdiction. Specific jurisdiction results when the defendant's contacts with the forum state are sufficient to subject the defendant to suit in the forum on a cause of action related to or arising out of those contacts. (*Sonora, supra*, 83 Cal.App.4th at p. 536.) Whether jurisdiction exists turns on the quality and nature of the defendant's activities in the forum related to a particular cause of action. (*Cornelison v. Chaney* (1976) 16 Cal.3d 143, 147–148 (*Cornelison*).) We therefore consider the relationship between the defendant, the forum, and the litigation. (*Snowney, supra*, 35 Cal.4th at p. 1062.)

We will find specific jurisdiction where (1) the defendant has purposefully availed himself or herself of doing business in the state; (2) the controversy at issue arises from or is related to the defendant's forum-related contact; and (3) assertion of jurisdiction would be reasonable. (*Pavlovich v. Superior Court* (2002) 29 Cal.4th 262, 269 (*Pavlovich*); *Burger King Corp. v. Rudzewicz* (1985) 471 U.S. 462, 476–477 [105 S.Ct. 2174; 85 L.Ed.2d 528] (*Burger King Corp*).)

A. Purposeful Availment

"'Purposeful availment'" occurs where a nonresident defendant purposefully directs its activities at the residents of the forum, purposefully derives benefit from its activities in the forum, creates a substantial connection with the forum, deliberately engages in

substantial activities in the forum, or creates continuing obligations between itself and residents of the forum. (See *Burger King Corp.*, *supra*, 471 U.S. at pp. 471–478.) By limiting the scope of a forum's jurisdiction in this manner, the purposeful availment requirement "ensures that a defendant will not be haled into a jurisdiction as a result of 'random,' 'fortuitous,' or 'attenuated' contacts." (*Id.* at p. 475.) The purposeful availment requirement focuses on the defendant's intentions. "'This prong is only satisfied when the defendant purposefully and voluntarily directs his activities toward the forum so that he should expect, by virtue of the benefit he receives, to be subject to the court's jurisdiction based on' his contacts with the forum. [Citation.]" (*Pavlovich, supra*, 29 Cal.4th at p. 269.)

Applying these factors, in *Elkman, supra*, 173 Cal.App.4th 1305, the court held that an insurer does not subject itself to specific personal jurisdiction based solely upon its acceptance of premium payments from the forum state and its processing and payment of claims submitted by insureds. (*Id.* at p. 1318.) *Elkman* concluded that the insurer had not solicited the insurance in California because it was not licensed or authorized to do so, and therefore the mere payment of premiums was insufficient to establish jurisdiction. (*Id.* at pp. 1316–1317.) Furthermore, it was the unilateral act of its insureds in moving to California that had generated the insurer's contacts with the state; thus, the insurer did not "purposefully avail[ ] itself" of forum benefits such that it should be subject to jurisdiction. (*Id.* at p. 1321.)

Similarly, in *HealthMarkets, Inc. v. Superior Court* (2009) 171 Cal.App.4th 1160 (*HealthMarkets*), defendant HealthMarkets, Inc. was a holding company incorporated in Delaware with its principal place of business in Texas. HealthMarkets, LLC, was a subsidiary of HealthMarkets, Inc., and defendant Mid-West National Life Insurance Company of Tennessee was a subsidiary of HealthMarkets LLC. The plaintiff alleged he was the victim of a fraudulent health insurance sales scheme perpetrated by defendants HealthMarkets, Inc. and Mid-West; he had purchased a policy issued by Mid-West from an agent working for a division of HealthMarkets known as Cornerstone. HealthMarkets, Inc. moved to quash service of the summons and complaint, arguing that it had no offices

or employees in California; did not own or lease property in the state; was not registered to do business in the state; was not involved in the marketing or administration of insurance issued to California residents; did not participate in the handling of the plaintiff's claims; and the agent which sold the policy was not a division of HealthMarkets, Inc. (*Id.* at pp. 1164–1165.) *HealthMarkets* found specific jurisdiction did not exist because the plaintiff had not shown that HealthMarkets, Inc. purposefully directed its activities at California, either directly through Mid-West or any other entity; due to the lack of purposeful availment, the reasonableness of exercising jurisdiction was weak. (*Id.* at p. 1173.)

Here, XLIB has not purposefully availed itself of the benefits of a California forum. The total number of policies—38—that XLIB issued to California insureds constitute such a small absolute number of policies compared to the total number of policies issued in California by all insurance companies that this contact with California does not rise to level of purposeful availment. Nor does the Quota Share Reinsurance agreement support a finding of activity directed at California merely because XLIB stands to receive income from its subsidiaries arising from that agreement based on hypothetical contacts with California reinsureds. There is no evidence in the record that XLIB sought out reinsurance contracts in the state such that it sought to enjoy the economic benefits of California contact. Rather, the evidence shows that XLIB studiously avoided contact with California, directing its employees on the rare occasions that they visited the state not to conduct any business while doing so, and policies issued to in-state business or individuals were handled through a layer of broker intermediaries.

Furthermore, "[t]he mere ownership of a subsidiary does not subject a nonresident parent company to specific personal jurisdiction based upon the subsidiary's forum contacts. Ownership of a subsidiary alone does not constitute purposeful availment. Rather, purposeful availment requires some manner of deliberately directing the subsidiary's activities in, or having a substantial connection with, the forum state." (*HealthMarkets*, *supra*, 171 Cal.App.4th at p. 1169; see *Pavlovich*, *supra*, 29 Cal.4th at

pp. 268–269.) Here, there is no evidence in the record the XLIB controlled or directed the activities of any of its subsidiaries, the XL America Group, XL Re, or the members of the reinsurance pool under the Quota Share Reinsurance agreement. [13]

Nonetheless, we point out this is a unique case. The small number of XLIB policies issued to California insureds, and the small number of trips made to California by XLIB personnel (10 trips in four years) does not rise to the level of purposeful availment sufficient to support jurisdiction. This is not to say, however, that an organization that has no business base in the state, yet whose everyday business contacts nonetheless rise to a level where the relative frequency of the contacts surpasses the occasional convention attendance, client meeting or telephone conference call might be subject to jurisdiction in this state. Depending on the facts of the particular case, there would be a threshold crossed where the organization or individual obtains such a benefit from its state contacts that an exercise of jurisdiction would be fair. Thus, while we recognize that activities surrounding business solicitation by a foreign company or individual which otherwise has no physical or business dealings in the state could in some circumstances rise to the level of contact sufficient to confer jurisdiction, such is not the case here.

B. Controversy Arising from Forum Contact

A controversy is related to or arises out of a defendant's forum contacts where there is a substantial connection between the forum contacts and the plaintiffs' claim. (*Vons*, *supra*, 14 Cal.4th at p. 453.) With respect to "a cause of action arising out of California-related economic activity, the basic test is whether the quality and nature of the defendant's activity in relation to the particular cause of action make it fair to exercise jurisdiction."

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[13] However, in *Anglo Irish Bank Corp., PLC v. Superior Court* (2008) 165 Cal.App.4th 969 (*Anglo Irish*) and *HealthMarkets*, *supra*, 171 Cal.App.4th 1160, the courts concluded that reliance on state law of agency and alter ego to determine the constitutional limits of specific personal jurisdiction was "an imprecise substitute for the appropriate jurisdictional question," which "was whether the defendant has purposefully directed its activities of the forum state by causing a separate person or entity to engage in forum contacts." (*HealthMarkets*, at p. 1170; *Anglo Irish*, at p. 983.)

(*Sanders v. CEG Corp.* (1979) 95 Cal.App.3d 779, 785.) However, "[a] claim need not arise directly from the defendant's forum contacts in order to be sufficiently related to the contact to warrant the exercise of specific jurisdiction. Rather, as long as the claim bears a substantial connection to the nonresident's forum contacts, the exercise of specific jurisdiction is appropriate." (*Vons*, at p. 452) "[W]e consider not only the conduct directly affecting the plaintiff, but also the broader course of conduct of which it is a part." (*Anglo Irish, supra*, 165 Cal.App.4th at p. 979.)

Here, the controversy arises from the issuance of insurance policies by XL Specialty— not XLIB—to California residents, a loss that occurred in California, allegedly improper handling of the claim, and a cancellation of the policy. The Hollander's claims do not arise out of any of the 38 XLIB policies issued in California, or XLIB's issuance of reinsurance or excess policies in California. Nor can jurisdiction be based upon XLIB's assumption of XL Re's obligations under the Quota Share Reinsurance agreement because the Quota Share Reinsurance agreement does not provide a basis for liability in the first instance.

C. Reasonableness of Jurisdiction

Factors related to the determination of whether an exercise of specific jurisdiction is reasonable include the burden on the defendant to defend in California, the interest of the forum state, and the plaintiff's interest in obtaining relief locally. (*Cornelison, supra*, 16 Cal.3d at p. 150–151.) "These considerations sometimes serve to establish the reasonableness of jurisdiction upon a lesser showing of minimum contacts than would otherwise be required. [Citations.] On the other hand, where a defendant who purposefully has directed his activities at forum residents seeks to defeat jurisdiction, he must present a compelling case that the presence of some other considerations would render jurisdiction unreasonable." (*Burger King Corp., supra*, 471 U.S. at p. 477.) The intensity of the defendant's contacts with the state and the reasonableness of the exercise of jurisdiction are inversely related: the stronger the contacts, the more reasonable an exercise of jurisdiction

becomes; the stronger the showing of reasonableness, the lesser the degree of contacts need be shown to establish purposeful availment. (*Ibid*.)

Here, the facts do not establish that XLIB had pervasive contacts with California. On the contrary, it had no offices or other business contacts in the state. Based upon these very limited contacts, the burden on XLIB to appear in California is high; California as a forum state has little interest in resolving the dispute as to XLIB given the limited contacts; the Hollanders already have before the court the primary insurer, XL Specialty and the parent XL Capital, thus lessening their interest obtaining relief from XLIB in California; and given the limited contacts, the judicial system's interest in resolving this dispute in California would expend unnecessary resources. We therefore find an exercise of jurisdiction over XLIB unreasonable.

DISPOSITION

The order is affirmed. Respondent is to recover its costs on appeal.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

MALLANO, P. J.

ROTHSCHILD, J.